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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 980

FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, EAL CHAPTER, AFL-CIO,
Petitioner

v.

EASTERN AIR LINES, INC., and AIR LINE PILOTS ASSOCIATION,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF OF PETITIONER

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STATUTES

Railway Labor Act, 45 U.S.C. § 151 *et seq.*:

Section 2, Third 9-10

Section 2, Fourth 10

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INTRODUCTION

Both Respondents, Eastern Air Lines, Inc. ("Eastern"), and Air Line Pilots Association ("ALPA"), have filed briefs in opposition to the Petition for Certiorari. This reply is submitted in response to both.

The nature of the briefs in opposition makes it imperative at the outset for Petitioner to discuss what this case *is not* about, because that is what Respondents have chosen to concentrate on.

First, this *is not* an appeal from the judgment of the Court of Appeals affirming the District Court on the merits of the claims stated in Petitioner's complaint. Rather, it is an appeal from the judgment of the Court of Appeals in which injunctive relief was denied on the threshold ground

that the District Court lacked jurisdiction to decide the merits.[1] The Court of Appeals never reached the merits. For this reason, ALPA's positing of the "Questions Presented" (ALPA 2, 8) [2] in terms of the merits as they were ruled upon by the District Court is improper, and serves only to distract attention from the real questions presented.

Second, this case *is not* about Judge Feinberg's opinion in the first case, or the appeal and denial of certiorari therein. Eastern devotes considerable space to a discussion of that case, which was decided on its merits and not on any jurisdictional ground, as if the instant action were the same, in order to characterize the instant action as "relitigation." (East. 4-5) Petitioner has already clearly indicated that the complaint in the instant case raises on its merits (matters not before this Court) matters separate and apart from those presented in the prior action. (Pet. 3) In fact, one crucial claim of the instant complaint is premised on the decision in that prior action: namely, assuming as Judge Feinberg held, that Eastern is free to unilaterally effect changes in its collective bargaining agreement with the Petitioner, and may bargain with the individual flight engineers over such changes, is Eastern also free to negotiate with another union respecting those changes? Petitioner thinks not, and seeks review here in order to put this question, among others, before the Court of Appeals once it has overcome the jurisdictional hurdle erected by that Court.

Third, this case *is not* an attempt by Petitioner to have this Court try *de novo*, or otherwise exercise judicial review of, the various Emergency Board proceedings under Section 10 of the Railway Labor Act, 45 U.S.C. § 160, re-

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[1] Accordingly, Petitioner did not append to its Petition the District Court decision. The confusion, which Petitioner hoped to avoid thereby, unfortunately has been injected back into this case by Respondents' unwillingness to distinguish between a judgment on the merits and one on jurisdiction.

[2] Hereinafter, references to the Briefs in Opposition of ALPA and Eastern will be indicated "ALPA —," "EAST. —," respectively.

ferred to by Respondents, which relate to crew complement. The efforts of Respondents, especially of ALPA, to rationalize their unlawful actions by suffuse references to agreements similar to those challenged here, which have been negotiated by ALPA with other carriers, and which have found favor with Emergency Boards and the extra-statutory Presidential Commission, can only serve the purpose of distracting this Court from the one issue properly before it, the jurisdiction of the Court below. Those agreements, negotiated under totally different circumstances, are irrelevant here.[3]

Questions Presented and Why the Petition Should Be Granted

The two questions presented by the Petitioner are:

1. "Did the Court below properly apply the doctrine of *M-K-T* to this case, where the effect of such application is to obliterate rights guaranteed by the Railway Labor Act, and to leave Petitioner remediless?" (Pet. 2)

[3] This would be true even if those agreements had been accurately described by ALPA, which they were not. Where those agreements resulted in a three-man crew, in all cases but two, they were negotiated either with the acquiescence of the Flight Engineers' International Association, or where FEIA was not, and had never been, the bargaining representative for flight engineers. The two exceptions, Continental Air Lines and Western Airlines, have been the subject of Court action on complaint of FEIA. See *FEIA, CAL Chapter* v. *Continental Air Lines*, 297 F.2d 397 (9th Cir. 1961), *cert. denied*, 369 U.S. 871 (1962); *WES Chapter, FEIA* v. *National Mediation Board*, Civil No. 2509-61, D.D.C., Nov. 6, 1961, *cert. denied*, 368 U.S. 953 (1962) (in advance of judgment of Court of Appeals), *aff'd*, 51 L.R.R.M. 2476 (D.C. Cir. 1962).

However, in neither of these two judicial challenges did FEIA achieve review of the merits. In the *Continental* case, the controversy was held to be moot; in *WES Chapter*, review was denied for want of jurisdiction under the rationale of *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297 (1943).

In none of the other examples referred to by Respondents did the carrier, in implementing the third-pilot agreement, alter the job title of the flight engineers and then advise them, as Eastern did here, "You are now a 'pilot-engineer' represented by ALPA." In these other examples, the carriers continue to recognize and bargain with FEIA.

2. "If it did, should that doctrine continue to be followed by this Court?" (*Ibid*)

Petitioner believes these questions merit the consideration of the Court because, in the first place, the Court below misapplied *M-K-T*, and erred in extending its holding, that a nonjusticiable "jurisdictional" dispute between two unions was involved, to the instant case which presents entirely different issues. Respondents make no real attempt to refute Petitioner's analysis of *M-K-T* and how it differs from the instant case. Instead, Respondents content themselves with the same overl -broad generalizations used by the Court below in rationalizing the application of *M-K-T* here: (1) two unions are involved (East. 9). This of course proves too much, and would defeat federal court jurisdiction anytime this phenomenon occurred regardless of the facts of unlawful action; (2) dual seniority exists (East. 9-10). This simply is not so. No pilot may "bump" a flight engineer out of a flight engineer job, because he has no flight engineer's seniority (Pet. 19-20); and (3) a work-assignment dispute is involved (ALPA 9). This, too, is not so (Pet. 19).

As its second reason for urging the granting of certiorari in this case, Petitioner has pointed specifically to a conflict between the circuits. Respondents have made no significant response to this contention. Eastern makes the astonishing statement (East. 10) that Petitioner "does not even attempt to show any area of conflict." Apparently Eastern has completely overlooked Petitioner's analysis of the conflicting decisions at pp. 25-29 of its Petition. Then Eastern itself proceeds to omit discussion of three (Pet. 28-29) of the four decisions in conflict cited by Petitioner. ALPA, in turn, omits any discussion of two of those cases. The conflict in decisions cited by Petitioner cannot be so easily disposed of, by pretending the cases do not exist.

Third, Petitioner argues that the two Questions Presented deserve this Court's consideration because Petitioner will be left remediless if the disputed application of *M-K-T*

is sustained.[4] On this issue, Petitioner's claim is, in barest form, as follows: Petitioner is the certified bargaining representative of Eastern flight engineers. Eastern has refused to bargain with Petitioner and, as Eastern concedes in its brief, has negotiated with ALPA concerning *flight engineers working as flight engineers.*[5] Neither the National Mediation Board, nor the bipartisan Flight Engineer System Board of Adjustment, has jurisdiction to remedy the violations of the Railway Labor Act stated in Petitioner's complaint.[6] Only the courts remain to hear and determine Petitioner's claims if an obliteration of rights is to be avoided.

Eastern's sterile response that "Petitioner . . . is not

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[4] This Court has very recently indicated that Petitioner's construction of *M-K-T* is proper, that the Court's holding therein must be limited to those cases where an obliteration of guaranteed rights would not result. In *International Association of Machinists, AFL-CIO* v. *Central Airlines, Inc.*, 31 U.S.L. Week 4335, 4338 n. 13 (U.S. April 16, 1963), this Court noted:

> "The absence of a specific statute conferring jurisdiction, in addition to §§ 1331 and 1337, was of no moment in such cases. See *Tunstall* v. *Brotherhood of Loc. Engrs.*, 232 U.S. 210, 213; *Leedom* v. *Kyne*, 358 U.S. 184, 189-190. These cases, and the one at bar, are unlike such cases as *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297, and *General Committee* v. *M-K-T R. Co.*, 320 U.S. 323 where Congress intended no judicial review and *its denial impaired no federal rights.*" (Emphasis added.)

[5] Eastern concedes in its brief what Petitioner claims is self-evident on face of the challenged bargaining agreements with ALPA, i.e., that Eastern and ALPA have bargained over the wages and terms and conditions of employment of *flight engineers* in the face of Petitioner's certification as the sole bargaining agent of employees in that classification. Specifically, Eastern admits that: "Eastern . . . trained . . . pilots for flight engineer's certificates so that they could qualify as 'pilot-engineers' *or flight engineers*. . . ." (East. 2) "[The three agreements] relate to terms and conditions of employment of pilots, as pilots, while they are serving as pilot-engineers *or flight engineers.*" (East. 8) (Emphasis added.)

[6] Respondents do not even purport to rebut Petitioner's argument (Pet. 20-23) that Mediation Board authority is lacking to decide Petitioner's claims, or to rebut Petitioner's argument (Pet. 23-25) that under that part of the Railway Labor Act dealing with air carriers no effective means exists to determine the dispute alleged.

remediless" (East. 12) is as totally inadequate, as it is unsupported. The fact remains that Petitioner is remediless, and could not possibly obtain any relief from resort to the Mediation Board. Petitioner has long ago obtained all that the Mediation Board is empowered to confer, a certification as exclusive bargaining representative for the flight engineers. There is nothing that the Mediation Board can do to compel Eastern to respect that certification, and to cease and desist from dealing with a different union. Unlike the National Labor Relations Board, the Mediation Board simply does not have that authority (Pet. 21, n. 21). Eastern, of course, recognizes this and thus does not disclose what relief Petitioner could obtain from the Mediation Board. (East. 12)

The sole remedy available to Petitioner is what the courts can provide under the rationale of *Virginian Ry.* v. *System Federation No. 40*, 300 U.S. 515 (1937), *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768 (1951), and *Leedom* v. *Kyne*, 358 U.S. 184 (1958), in order to avoid an obliteration of guaranteed rights.

It is understandable that ALPA does not wholeheartedly[7] join with Eastern in arguing that the Mediation Board is the only forum before which Petitioner can present the claims stated in its complaint. *ALPA has recently filed in the same United States District Court as did Petitioner, a complaint against American Airlines identical to that filed by Petitioner herein*, charging American with, *inter alia*:

(1) refusing to "comply with ALPA's request that the employer refrain from engaging in collective bargaining with the unauthorized committee of pilots concerning the rules, rates of pay, working conditions of the crafts or class of pilots. . . ."

(2) "continuing to treat with persons who are not an-

[7] ALPA claims only that Petitioner "misconceives the decision of . . . M-K-T." (ALPA 11) The reasons given by ALPA why this is so are precisely those stated by Petitioner (Pet. 32-33) in support of its request for reconsideration by this Court of the decision in *M-K-T* and *Southern Pacific*.

> thorized to engage in collective bargaining concerning rules, rates of pay and working conditions of the craft or class of pilots. . . .'"[3]

By some strange process of reasoning *M-K-T* is a bar to the instant suit but no bar to an identical suit filed by ALPA. The compelling logic would seem to have required ALPA to join Petitioner in requesting that certiorari be granted.

Yet another consideration supports the granting of certiorari in this case. Let us assume, for the purpose of discussion, that it could properly be said that the circumstances present here involve an existing or potential representation or jurisdictional dispute between FEIA and ALPA over which the National Mediation Board has jurisdiction. The fact still remains that Eastern did not wait for the Mediation Board, or any other tribunal, to resolve such dispute. By entering into agreements with ALPA covering the flight engineers it arrogated to itself the determination of matters which, by its own thesis, are the exclusive function of the Mediation Board.

Long ago, the National Labor Relations Board faced an identical problem. With judicial approval, it has held, under what is known as the *Midwest Piping* doctrine, *Midwest Piping and Supply Co.*, 63 NLRB 1060 (1945), that the Labor Act imposes a strict duty of neutrality upon an employer who is faced with rival representation claims, and that the employer violates the Act by entering into an agreement with one union at a time when the claim of another union has raised a real question of representation.

In *Midwest Piping*, the Labor Board held:

> "We agree, however, with the Trial Examiner that after the close of the original hearing herein, the respondent violated the Act by entering into a 'union shop' agreement with the Steamfitters. The respondent knew at the time that the contract was executed, that there existed a real question concerning the rep-

[3] The entire complaint of ALPA is appended hereto as Appendix A.

resentation of the employees in question. The record shows that both the Steamfitters and the Steelworkers had vigorously campaigned in the plant, had apprised the respondent of their conflicting majority representation claims, and had filed with the Board conflicting petitions, which are still pending, alleging the existence of a question concerning the representation of the employees covered by the agreement. Under such circumstances, the Congress has clothed the Board with the exclusive power to investigate and determine representatives for the purposes of collective bargaining. In the exercise of this power, the Board usually makes such determination, after a proper hearing and at a proper time, by permitting employees freely to select their bargaining representatives by secret ballot. In this case, however, the respondent elected to disregard the orderly representative procedure set up by the Board under the Act, for which both unions had theretofore petitioned the Board, and to arrogate to itself the resolution of the representation dispute against the Steelworkers and in favor of the Steamfitters. In our opinion such conduct by the respondent contravenes the letter and the spirit of the Act, and leads to those very labor disputes affecting commerce which the Board's administrative procedure is designed to prevent.

"We further find that the respondent's afore-mentioned conduct also constitutes a breach of its obligation of neutrality. As we have previously held, a neutral employer, on being confronted with conflicting representation claims by two rival unions, 'would not negotiate a contract with one of them until its right to be recognized as the collective bargaining representative had been finally determined under the procedure set up under the Act.' Here, the respondent knew that the Board already had jurisdiction over the existing question concerning the representation of the employees covered by the contract, and that, in accordance with its usual practice, the Board would not proceed to a resolution of that question until it had passed upon the then pending original complaint herein, hearing on which had already been concluded. That no unfair labor practices are found herein on the original complaint does not alter the effect of the respondent's later breach of its neutrality obligation.

> "We are of the opinion and find that the respondent, by executing a 'union shop' agreement with the Steamfitters in the face of the representation proceedings pending before the Board, indicated its approval of the Steamfitters, accorded it unwarranted prestige, encouraged membership therein, discouraged membership in the Steelworkers, and thereby rendered unlawful assistance to the Steamfitters, which interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act." 63 NLRB at 1069-1071 (Footnotes omitted)

Accord, NLRB v. *Signal Oil and Gas Co.*, 304 F.2d 785 (5th Cir. 1962); *NLRB* v. *Clegg*, 304 F.2d 163 (8th Cir. 1962); *NLRB* v. *Marcus Trucking Co.*, 286 F.2d 588 (2d Cir. 1961); *NLRB* v. *Eastern Massachusetts Street Railway Co.*, 235 F.2d 700 (1st Cir. 1956); *Maryland News Co.*, 138 NLRB No. 28 (1962); *Novak Logging Co.*, 119 NLRB 1573 (1958); *Cf. International Ladies Garment Workers' Union* v. *NLRB*, 366 U. S. 731, 737-740 (1961).

See also *Neo Gravure Printing Co.*, 136 NLRB No. 127 (1962) (agreement assigning to Paper Handlers Union work performed in unit for which Mailers Union is designated bargaining agent held unlawful); *Metropolitan Millwork, Inc.*, 138 NLRB No. 129 (1962) (employer violated Labor Act by entering into contract with union at time when employees were engaged in strike and picketing on behalf of another union seeking renewal of expired agreement); *Brown* v. *Pacific Telephone and Telegraph Co.*, 218 F.2d 542 (9th Cir. 1954) (District Court erred in refusing to issue injunction against employer which dealt with rival union, under circumstances obliging employer to deal only with certified union.)

The same duty of strict neutrality is imposed by the terms of the Railway Labor Act.[9] And the enforcement of

[9] Section 2, Third, 45 U.S.C. § 152, Third, provides in pertinent part that:

> "Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any

that duty, which, again, is beyond the authority of the Mediation Board, is nowhere vested if it is not vested in the federal courts under the principle of *Virginia Ry.*

Accordingly, the Court below erred in denying jurisdiction even if it be assumed—contrary to fact—that a representation dispute existed. The Court had jurisdiction to prevent Eastern from violating its obligation of neutrality, even if it did not have jurisdiction to compel Eastern to continue to deal with FEIA.[10]

In any event, that precise issue—the applicability of the *Midwest Piping* doctrine under the Railway Labor Act—has never been ruled upon by this Court. Yet, it is of vital importance in the administration of the Act, particularly if *M-K-T* is considered as having continued vitality. Standing alone, and apart from all of the other considerations discussed herein, and in the Petition, this factor warrants the granting of certiorari.

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way interfere with, influence, or coerce the other in its choice of representatives."

Section 2, Fourth, 45 U.S.C. § 152, Fourth, provides in pertinent part that:

> "No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization. . . ."

[10] ALPA's argument to the contrary (ALPA 10) is misleading and distorts the controlling legal principles. Of course a certificate is not an exclusive license to perform certain work, and of course work assignments are matters of collective bargaining. Petitioner has never argued otherwise. A certificate is, however, an exclusive license to bargain over the work assignments of the employees in the bargaining unit. Eastern is not free to ignore this exclusivity, and is not free to bargain with whomever it pleases. It was to vindicate Petitioner's status as the exclusive collective bargaining representative over all matters affecting the employment relationship, including work assignments, that the complaint was filed herein to compel Eastern to honor Petitioner's certificate by bargaining with it concerning work assignments of flight engineers, rather than bargaining with ALPA.

Conclusion

For the reasons stated in the Petition, and herein, the Petition should be granted.

Respectfully submitted,
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APPENDIX A

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK

Verified Complaint
No. 63 Civ. 585

CHARLES H. RUBY, as President of the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, an unincorporated association,
Plaintiffs,

against

AMERICAN AIRLINES, INC., *Defendant.*

Come now plaintiffs, CHARLES H. RUBY as President of AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, and complain of AMERICAN AIRLINES, INC., defendant, and allege as follows:

1. This action for an injunction and declaratory judgment arises under the Railway Labor Act, as amended, hereinafter called the "ACT," 44 Stat. 577, as amended, 45 U.S.C. § 151 *et seq.*

2. This Court has jurisdiction of this action under 28 U.S.C. 1331, 1337, 2201 and 2202.

3. Plaintiff Charles H. Ruby is the President of Air Line Pilots Association, International (hereinafter called "ALPA"). Plaintiff ALPA is an unincorporated association organized for the purposes and objects of a labor union. ALPA has actively represented pilots for purposes of collective bargaining since 1933. It is now the recognized representative of more than 14,000 professional air line pilots and other air carrier employees in the United States. ALPA is the collective bargaining representative of all airline pilots employed by all scheduled air carriers in the United States. It currently has collective bargaining agreements covering pilots and other crew members with approximately 46 common carriers by air.

4. Plaintiff ALPA is a "representative" as that term is defined in Section 1 (Sixth) of the Act, 44 Stat. 577, as amended, 45 U.S.C. 151 (Sixth).

5. Defendant American Airlines, Inc., (hereinafter called "American") is now and at all times material to this action was engaged in the business of providing air transportation service as an air carrier and is certificated under the provisions of the Federal Aviation Act of 1958.

6. American is a common carrier by air engaged in interstate commerce and is a "carrier" as defined in Section 1, (First) of the Act, 44 Stat. 577, 45 U.S.C. 151 (First).

7. Defendant resides, and is doing business, within the judicial district of the Southern District of New York.

8. This action is brought by ALPA in its own behalf and for and in the interests of all of the pilots in the employ of carriers who are parties to collective bargaining agreements with ALPA.

9. ALPA is now the recognized, duly designated and authorized representative of the craft or class of pilots employed by American.

10. Since 1939 all collective bargaining agreements and changes in rules, rates of pay and working conditions covering pilots in the employ of American have been effected only with the express authorization and approval of ALPA. Negotiations have been uniformly conducted and continued only with the express consent and approval of ALPA acting by its President. Every collective bargaining agreement with American covering the pilots in its employ has been made with and executed by ALPA, by its President, as the representative of the pilots in the employ of American.

11. ALPA, by its President, has executed and is a party to the collective bargaining agreements governing the rules, rates of pay and working conditions of pilots in the employ of American, as well as all other scheduled air carriers in the United States. Modifications of such agreements by such scheduled air carriers, including American, or by

ALPA, have been initiated by the carriers' notice of intended change addressed to ALPA, or by ALPA's notice addressed to respective carriers.

12. On July 24, 1959, American and ALPA entered into a collective bargaining agreement covering the airline pilots in the service of American. That agreement was amended, in respects not here material, by agreement effective June 1, 1961.

13. Section 1 of that agreement provides:

"RECOGNITION:

The Air Line Pilots Association, International, has shown satisfactory proof to the Company of the fact that it represents more than a majority of the air line pilots of the Company."

14. Section 33 of that agreement provides:

"DURATION:

This Agreement shall become effective January 21, 1959, except as otherwise stated herein, and shall continue in full force and effect until June 1, 1961, and shall renew itself without change until each succeeding June 1st thereafter unless written notice of intended change is served in accordance with Section 6, Title I of the Railway Labor Act, as amended, by either party hereto at least sixty (60) days prior to June 1, 1961, or June 1st of any subsequent year."

15. In accordance with the provisions of Section 33 of the Agreement, ALPA served a notice of intended change on American and American served a notice of intended change on ALPA at least sixty (60) days prior to June 1, 1961. American's notice of intended change was addressed to Clarence M. Sayen, then the President of ALPA.

16. No change in Section 1 of the Agreement, "RECOGNITION," was proposed by American or ALPA in the aforesaid respective notices.

17. The notice of intended change served upon ALPA by American as relating to the matter of the training and qualification of crew members on jet aircraft, stated:

"The Company further reserves the right to propose any additions, deletions, modifications or other changes in the Agreement which may be warranted as a result of the findings or recommendations of the Commission appointed by the President of the United States on February 21, 1961, pursuant to Executive Order No. 10921 to investigate the dispute between certain air carriers and the Flight Engineers International Association."

18. The President of the United States had theretofore, by Executive Order No. 10921, established a President's Commission on the Airlines Controversy, which reported to him on the subject of the training and qualifications of crew members on jet aircraft. The last such report was rendered on October 17, 1961. At the instance of the President of the United States and the Secretary of Labor, a Board of Arbitration, consisting of Dr. George W. Taylor, Professor of Industrial Relations, George Meany, President of the AFL-CIO, and Edgar Kaiser, industrialist, was constituted to investigate and issue an award concerning the training and qualifications of the third crew member on jet aircraft operated by a three-man crew, and an award by that board was made on May 21, 1962. A Presidential Emergency Board created pursuant to the provisions of Section 10 of the Railway Labor Act, as amended, was established to report on a dispute involving Eastern Air Lines and its *flight deck employees*, and after many months of hearing evidence relating to the training and qualification of the third crew member on jet equipment, this Board issued its report on July 21, 1958. In each of the foregoing reports and awards it was uniformly determined that the third crew member on jet aircraft operated by a three-man crew should possess at least a commercial pilot's license, an instrument rating and certain additional pilot qualifications. Like conclusions were reached by other public boards and agencies in kindred proceedings. The training and qualifications so determined formed the basis of agreement for the pilots and the flight engineers with Pan American World Airways, Inc. On Trans World Airlines,

similar agreements were reached utilizing these determinations as a basis of settlement, and such basis of settlement was publicly approved and endorsed by the President of the United States, the Secretary of Labor, the President's Commission on the Airlines Controversy and the National Mediation Board.

19. ALPA had theretofore conducted an extensive study concerning the training and qualifications for the third crew member necessary to insure the safe operation of jet equipment. In 1956, as a result of this study, ALPA, in the interests of safe operations, and by its Board of Directors duly elected by the membership, adopted a policy which comprehended that the third crew member on jet equipment should possess at least a commercial pilot's license, instrument rating and certain additional pilot training.

20. Under the Constitution and By-Laws and policy of ALPA, negotiations and the resulting agreement for the pilots employed by American must fall within and implement the aforesaid minimum standard and policy which requires the third crew member in a three-man jet crew to possess said minimum pilot qualifications. Plaintiff Charles H. Ruby, President of ALPA, and ALPA's Executive Committee, consisting of international officers duly elected by the membership of ALPA, are likewise required to implement such qualifications as are reflected in the aforesaid public determination and policy. Under the Constitution and By-Laws and policy of ALPA, its President and officers may not execute or conclude an agreement which does not include such minimum pilot qualifications for the third crew member.

21. In the course of negotiations with American, ALPA, by its President, took the position and clearly advised American that the agreement must provide for the pilot qualification and training of flight engineers now in the employ of American who are to serve as third crew members on jet aircraft operated by a crew of three men.

22. Upon information and belief, American claims to

be unwilling to provide said pilot training and qualifications for the third crew member in a three-man jet crew without withholding from the proposed agreement certain unrelated benefits which it says it is otherwise prepared to extend. Such position by American is contrary to the notice of intended change given by it.

23. A committee of pilots in the employ of American attending the negotiations has taken the position that ALPA abandon its standard for pilot qualification of the third crew member on American's jet aircraft, and that it should, instead, seek an agreement with American containing the aforesaid unrelated benefits.

24. Charles H. Ruby, President of ALPA, advised the committee of American pilots that, pursuant to ALPA's Constitution and By-Laws, the mandatory ALPA policy requiring pilot qualification for third crew members on jet aircraft could not thus be abandoned. He directed that ALPA continue to bargain with American for the pilot training and qualifications of third crew members.

25. When initial efforts to compose the disagreement between ALPA and the committee of pilots were not fruitful, the negotiations between ALPA and American, in progress since April, 1961, were recessed on or about November 28, 1962. Authorized negotiations have not yet been resumed.

26. Negotiation of prior collective bargaining agreements between ALPA and American have been conducted only with the express consent and authority of ALPA, by its President, with his personal designee being present, and accompanied by a committee of pilots employed by the carrier involved. While this pattern for negotiations is generally followed among local pilot groups, it is nevertheless true in every case that ALPA alone, and not the individual pilots or their committee, is a party to the agreement ultimately reached, and such agreements have never been valid or enforceable until they have been executed by the President of ALPA.

27. Upon information and belief, American, subsequent

to January 11, 1963, has been engaging in conferences or negotiations with a committee of pilots employed by American Airlines concerning the rules, rates of pay and working conditions of the craft or class of pilots employed by American. Upon information and belief, these negotiations or conferences have been held and are now being held for the purpose of concluding a collective bargaining agreement concerning the matters opened for change by the notices of intended change dated March 30 and March 31, 1961. Upon information and belief, representatives of American and members of the pilot committee have the stated intention of concluding a collective bargaining agreement purportedly covering the craft or class of pilots employed by American.

28. Article XVIII of the Constitution and By-Laws of the Air Line Pilots Association, International, provides:

> "Conferences or negotiations shall not be initiated, carried on, or concluded in the name of the Association by any member, group, or groups of members thereof to make or establish employment agreements relating to rates of pay, rules or other conditions of employment, or any other agreements, contracts, or documents of a similar or related character, or any other form of agreements, contracts, or documents without the prior approval of the Executive Committee or the President. Any and all agreements, contracts, or documents of any and every character whatsoever shall not become effective, binding or operative unless and until they bear the signature of the President or other officer or officers duly authorized so to sign by the Board of Directors, Executive Board or Executive Committee."

29. Upon several occasions subsequent to January 11, 1963, ALPA, by its President, plaintiff Charles H. Ruby, notified and advised American that the committee of pilots is not authorized either to negotiate with or conclude an agreement with American governing the pilots employed by that carrier. ALPA has, in addition, notified and advised American that ALPA, by its President, is the exclusive bargaining representative of its pilots, and that any

agreement which the committee concludes with American will neither be executed nor honored by ALPA. ALPA has, since that date, requested that American meet with it for the resumption of authorized negotiations.

30. Notwithstanding the foregoing, American has continued up to the present time to negotiate with the committee of pilots concerning the rules, rates of pay, and working conditions of its pilots. American has refused to resume collective bargaining negotiations with ALPA, the duly designated recognized bargaining agent of its pilots. American has, in reply to the foregoing notices from ALPA, stated its determination to continue negotiating with the committee of pilots until an agreement is concluded.

31. American has failed and refused to comply with ALPA's request that the employer refrain from engaging in collective bargaining with the unauthorized committee of pilots concerning the rules, rates of pay, or working conditions of the craft or class of pilots employed by American.

32. American, in violation of Section 2 of the Act, has failed and refused to treat with ALPA as the duly designated representative of the craft or class of pilots employed by American.

33. American, in violation of Section 2 of the Act, has proceeded to, and is continuing to treat with persons who are not authorized to engage in collective bargaining concerning rules, rates of pay and working conditions of the craft or class of pilots employed by American.

34. American, in violation of Section 2, Third, of the Act, is interfering with, influencing and coercing its employees in the exercise of their freedom of choice as to representatives.

35. American, in violation of Section 2, Fourth, of the Act, has interfered with the representative rights of its employees provided by the Act. American has influenced and coerced said employees in an effort to induce them not to remain members of ALPA. American has maintained, assisted and contributed to the conduct of unauthorized

collective bargaining between American and persons other than ALPA, the duly designated and authorized representative of the craft or class of pilots in the employ of American, in violation of its obligations and other rights of such employees provided for under the Act.

36. American, in violation of Section 2 of the Act, is interfering with the right of ALPA to treat with the employer concerning said rules, rates of pay and working conditions of the craft or class of pilots employed by American.

37. American is engaged upon a course of conduct which, if permitted to continue, will result in changes in rules, rates of pay, or working conditions, in a manner prohibited by Section 2 (Seventh) of the Act.

38. By engaging in collective bargaining with persons other than the true representative of the craft or class of pilots employed by American, defendant has undermined the status of ALPA as the recognized and duly designated representative of that craft or class.

39. By reason of the foregoing, American has violated and is violating the positive mandates of the Railway Labor Act, and specifically Section 2 (First), (Third), (Fourth), (Seventh), and (Ninth) and Section 6 of the Act.

40. Plaintiffs verily believe that these violations of the Act by American will continue unless and until they are enjoined and restrained by an appropriate order of this Court.

41. Substantial and irreparable injury has resulted and will result to plaintiffs, to the pilots in American's employ, and to others as a result of American's acts in violation of the mandates of the Act.

42. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray:

1. That this Honorable Court issue a preliminary injunction restraining and enjoining American from engaging in negotiations or collective bargaining concerning the rules, rates of pay and working conditions of the craft or class of pilots employed by American with any person or group

other than the duly designated and recognized collective bargaining representatives of said craft or class, ALPA, by its President, Charles H. Ruby, or his designee.

2. That this Honorable Court issue a preliminary injunction restraining and enjoining American from making any agreement for or changes in rules, rates of pay, or working conditions, or making any agreements or changes except such agreement or changes as may result from collective bargaining between American and the duly designated and recognized representative of the craft or class of pilots employed by American, ALPA, by its President, Charles H. Ruby, or his designee.

3. That this Honorable Court issue a preliminary injunction restraining and enjoining American from refusing to bargain collectively with the duly designated representative of the craft or class of pilots employed by American, ALPA, by its President, Charles H. Ruby, or his designee.

4. That this Honorable Court make and enter its judgment upon the conclusion of the trial of this action declaring the rights of the parties and making permanent the provisions of the preliminary injunction prayed for herein.

5. That damages be awarded to plaintiffs in an amount to be determined by the Court as compensation for the defendant's wrongful course of conduct by which it has undermined the status of ALPA as collective bargaining representative of the craft or class of pilots employed by American, and of pilots employed by all other scheduled air carriers in the United States.

6. That plaintiffs be awarded such other and further relief to which they may be entitled.

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